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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

Attorneys for Plaintiff HILDA L. SOLIS
Secretary of Labor, United States Department of Labor

UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

HILDA L. SOLIS,
Secretary of the United States
Department of Labor,

Plaintiff,

v.

GREATBANC TRUST COMPANY,
SIERRA ALUMINUM COMPANY, and
THE SIERRA ALUMINUM COMPANY
EMPLOYEE STOCK OWNERSHIP
PLAN

Defendants.

Civil Action No.

EDCV-1648-R1 DTB

COMPLAINT FOR
ERISA VIOLATIONS
(29 U.S.C. §§ 1001 et
seq.)

Plaintiff Hilda L. Solis, Secretary of the United States Department of
Labor (the "Secretary"), alleges:

JURISDICTION AND VENUE

1
2 1. This action arises under the Employee Retirement Income
3
4 Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§ 1001, et seq., and
5 is brought by the Secretary to obtain relief under ERISA §§ 409 and
6 502(a)(2) & (5), 29 U.S.C. §§ 1109 and 1132(a)(2) & (5), to redress
7
8 violations and enforce the provisions of Title I of ERISA.

9 2. This Court has subject matter jurisdiction over this action
10
11 pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

12 3. Venue with respect to this action lies in the United States
13
14 District Court for the Central District of California, pursuant to ERISA §
15 502(e)(2), 29 U.S.C. § 1132(e)(2) because the Sierra Aluminum Company
16 Employee Stock Ownership Plan (the "Plan" or "ESOP") is administered in
17 Riverside, California, within this district, and the fiduciary breaches at issue
18
19 took place within this district.

20
21 **PARTIES**

22 4. Plaintiff, the Secretary, is vested with authority to enforce the
23
24 provisions of Title I of ERISA by, among other things, the filing and
25 prosecution of claims against fiduciaries and other parties who commit
26 violations of ERISA. ERISA §§ 502(a)(2) and (5), 29 U.S.C. §§ 1132(a)(2)
27
28 and (5).

8 6. Defendant Sierra Aluminum Company ("Sierra Aluminum") is a
9
10 California corporation with a principal place of business in Riverside,
11 California. At all relevant times, Sierra Aluminum produced extruded
12 aluminum products. At all relevant times, Sierra Aluminum was the sponsor
13 of the ESOP.
14

15 7. The ESOP is an employee benefit plan as defined by ERISA §
16 3(3), 29 U.S.C. § 1002(3), and is subject to ERISA pursuant to ERISA §
17 4(a)(1), 29 U.S.C. § 1003(a)(1). The ESOP was established by Sierra
18 Aluminum in 2000. The ESOP is joined as a party defendant pursuant to
19 Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that
20 complete relief can be granted.

24 INTRODUCTION

25 8. The ERISA violations arise from GreatBanc's failure to protect
26 the ESOP's interests in connection with the ESOP's purchase of Sierra
27
28 Aluminum stock from the company's founders. GreatBanc caused or

1 permitted the ESOP to buy the stock for more than its fair market value,
2 without a proper valuation of the stock, and without prudently investigating
3 the merits of the transaction on behalf of the ESOP. In so doing, GreatBanc
4 benefitted the sellers at the ESOP's expense and violated ERISA's prohibited
5 transactions provisions and its duties of prudence, loyalty, and adherence to
6 plan documents.
7

8
9 9. GreatBanc and Sierra Aluminum also entered into
10 indemnification agreements which are void under ERISA because they would
11 permit Sierra Aluminum to pay GreatBanc's losses, costs, expenses, and
12 damages from legal proceedings even if it violated ERISA, as long as the
13 matter did not proceed to a final judgment from which no appeal could be
14 taken. As the 100% shareholder of Sierra Aluminum, the ESOP would be
15 harmed if said indemnification agreements were enforced as written.
16
17

18 **GENERAL ALLEGATIONS**

19
20 10. The ESOP was adopted by Sierra Aluminum on March 31, 2001
21 with an effective date of April 1, 2000. The ESOP is funded exclusively
22 through employer contributions, as determined by Sierra Aluminum's Board
23 of Directors, in the form of cash or Sierra Aluminum stock. The ESOP
24 currently owns 100% of Sierra Aluminum's stock. It also invests a small
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1 amount in interest-bearing cash accounts. As of the fiscal plan year ending
2 on March 31, 2011, the ESOP had 322 participants with account balances.

3
4 11. The Trust Agreement was also adopted on March 31, 2001 with
5 an effective date of April 1, 2000. The 2000 Trust Agreement sets forth the
6 duties and responsibilities of the ESOP's Trustee.

7
8 12. Pursuant to an Engagement Agreement dated April 1, 2005 by
9 and between LaSalle Bank and Sierra Aluminum, LaSalle Bank was
10 appointed the sole Trustee of the ESOP upon the resignation of the then
11 current Trustees.

12
13 13. GreatBanc was appointed as the ESOP's successor Trustee,
14 effective as of October 31, 2005. GreatBanc thereby assumed and became
15 vested with all of the powers, duties, privileges, discretions and obligations
16 that had been imposed upon or reserved to LaSalle Bank.

17
18 14. Under ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), a person
19 acquires fiduciary status if he (i) exercises discretionary authority or control
20 over the management of a plan or exercises any authority or control over plan
21 assets . . . or (iii) has discretionary authority or responsibility in the
22 administration of a plan.

23
24 15. At all relevant times, GreatBanc was a fiduciary of the ESOP
25 pursuant to ERISA §§ 3(21)(A)(i) and (iii), 29 U.S.C. §§ 1002(21)(A)(i) and
26

1 (iii), by virtue of its authority as a successor Trustee to LaSalle Bank and the
2 Board of Trustees. As a fiduciary, GreatBanc is also a party in interest to the
3 ESOP pursuant to ERISA § 3(14)(A), 29 U.S.C. § 1002(14)(A).
4

5 16. Section 16(c) of the 2000 Plan Document sets forth the Trustee's
6 powers and duties. Among the enumerated powers is selecting an
7 independent appraiser and determining the fair market value of Sierra
8 Aluminum's stock as of such dates as the Board of Trustees determines to be
9 necessary or appropriate.
10

11 17. Section 5(a) of the 2000 Plan Document provides that "[a]ll
12 purchases of Sierra Aluminum Stock by the Trustee shall be made only at
13 prices which do not exceed the Fair Market Value as of the date of purchase."
14 The 2000 Plan Document defines "Fair Market Value" as "[t]he fair market
15 value of Sierra Aluminum Stock, as determined by the Trustee for all
16 purposes under the Plan based upon a valuation by an independent appraiser
17 (as defined in Section 401(a)(28)(C) of the Code) on an enterprise basis."
18

19 18. Since its inception, the ESOP has engaged in three leveraged
20 stock transactions to purchase shares of Sierra Aluminum stock from the
21 family trusts of Sierra Aluminum's co-founders, William Hunter and Edmond
22 Hudon: the Edmond A. Hudon Family Trust (the "Hudon Trust") and the
23 2002 William C. Hunter and Cynthia L. Hunter Revocable Trust (the "Hunter
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1 Trust"). The first transaction took place on December 7, 2001 when the
2 ESOP purchased shares of Sierra Aluminum's preferred and common stock
3 for approximately \$24 million (the "2001 Transaction"). The second
4 transaction took place on October 19, 2005 when the ESOP purchased shares
5 of common stock for approximately \$21 million and became a majority
6 shareholder of Sierra Aluminum (the "2005 Transaction"). The third and
7 final transaction took place on June 20, 2006 when the ESOP purchased
8 3,402,337 shares of common stock for approximately \$53 million (the "2006
9 Transaction"). The 2006 Transaction is the subject of this action.
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12

13
14 19. Prior to the 2006 Transaction, the ESOP owned 55.4% of Sierra
15 Aluminum's common stock shares. The remaining shares were owned by (a)
16 the Hunter Trust, (b) the Hudon Trust, and (c) Edward Harris.
17

18 20. At the time of the 2006 Transaction, Edward Harris, who is
19 currently the President of Sierra Aluminum, controlled approximately 1% of
20 the company's stock. It was contemplated that his shares would be redeemed
21 by the company in a subsequent transaction to close by August 2006. After
22 the consummation of the 2006 Transaction and following Sierra Aluminum's
23 redemption of Harris' shares, the ESOP became the 100% shareholder of
24 Sierra Aluminum.
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1 21. To fund the \$53 million purchase price, the ESOP (a) borrowed
2 \$10 million in cash from Sierra Aluminum and (b) borrowed a combined
3 total of \$43 million in subordinated seller notes from the Hudon Trust and the
4 Hunter Trust.
5

6
7 **ERISA VIOLATIONS**

8 **The ESOP's June 20, 2006 Stock Purchase Transaction**
9

10 22. LaSalle Bank, the ESOP's Trustee prior to GreatBanc's
11 appointment, was retained by Sierra Aluminum's Board of Directors to
12 represent the interests of the selling shareholders, the Hunter Trust and the
13 Hudon Trust, by analyzing and structuring a proposed deal whereby the
14 shareholders would sell all of their remaining shares.
15

16 23. On or about April 12, 2006, LaSalle Bank made a presentation
17 to Sierra Aluminum's Board of Directors outlining a transaction whereby the
18 Hunter Trust and the Hudon Trust would sell their combined 43.6% equity
19 interest back to the company via a redemption and to the ESOP via a
20 purchase for total consideration of \$63.7 million.
21

22 24. Also in mid-April 2006, Sierra Aluminum contacted a valuation
23 firm (the "Appraiser") and requested a meeting to discuss the 2006
24 Transaction. LaSalle Bank also attended this meeting and presented the
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1 transaction's preliminary structure and a timeline for completing the stock
2 purchase transaction.

3
4 25. Following this meeting, GreatBanc and Sierra Aluminum
5 retained the Appraiser to provide an analysis of the fair market value of
6 Sierra Aluminum's common stock and an opinion as to whether the 2006
7 Transaction was fair to the ESOP from a financial point of view.
8

9
10 26. The Appraiser had been previously retained by (a) the ESOP's
11 Board of Trustees to provide a transaction-specific valuation opinion and
12 fairness opinion in connection with the 2001 Transaction, and to provide
13 annual valuation reports of Sierra Aluminum's common stock from 2001
14 through 2005, and (b) by GreatBanc to provide a transaction-specific
15 valuation opinion for the 2005 Transaction and to provide annual valuation
16 reports for each plan year since 2006.
17
18

19 27. The Appraiser's Engagement Agreement was in a letter form
20 dated April 21, 2006 and was sent from the Appraiser to GreatBanc.
21

22 28. The Engagement Agreement defines the scope of the Appraiser's
23 engagement as follows:
24

25 On behalf of the ESOP, you have requested that [the Appraiser]
26 provide: (i) an analysis regarding the fair market value of the common
27 stock of the Company as of a mutually agreeable current date
28

1 ("Valuation Opinion"); and (ii) an opinion as to whether the
2 Transaction is fair to the ESOP from a financial point of view
3 ("Fairness Opinion"). We have been engaged solely for the purpose of
4 preparing and delivering the Valuation Opinion and the Fairness
5 Opinion. We will report solely to the Trustee notwithstanding the fact
6 that the Company will pay all fees for our work.
7

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9
10 29. On or about April 21, 2006, LaSalle Bank made another
11 presentation regarding the 2006 Transaction. In this presentation, LaSalle
12 Bank again provided an overview of the proposed transaction, its preliminary
13 structure, and described Hunter and Hudon's objectives to be the following:
14 to achieve liquidity while Sierra Aluminum remained independent and
15 employee owned, to provide a transaction structure that allows Sierra
16 Aluminum the financial flexibility to fund its growth plan, to enable Sierra
17 Aluminum and its shareholders to realize significant tax savings in the future
18 through converting to a 100% S-corporation, and to construct seller notes to
19 allow for a possible secondary sale to a third party. The Appraiser was
20 provided with the April 21, 2006 presentation materials.
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25 30. On or about May 1, 2006, the Appraiser was again asked to
26 attend another presentation by LaSalle Bank as they again discussed the
27 structure of the proposed transaction. LaSalle Bank now increased its
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1 valuation of the selling shareholders' interest from \$63.7 million, which was
2 the amount presented to the Board of Directors on April 12, 2006, to \$67.6
3 million.
4

5 31. In justifying its valuation, LaSalle Bank emphasized the tax
6 benefits Sierra Aluminum would enjoy from its 100% ESOP-owned status
7 and the fact that the sale transaction contemplated seller financing at interest
8 rates allegedly far below market.
9
10

11 32. LaSalle Bank also justified its May 1, 2006 valuation on an
12 "unsolicited offer" made by Alcoa, Inc., a public company producer of
13 primary aluminum, fabricated aluminum and alumina, to purchase Sierra
14 Aluminum for \$120 million. However, Alcoa, Inc.'s offer was made in late
15 2000, nearly six years prior to the 2006 Transaction.
16
17

18 33. The Appraiser provided GreatBanc two draft valuation reports
19 and one final valuation report in connection with the 2006 Transaction as
20 follows: (a) a draft report dated May 12, 2006 for a May 16, 2006 meeting of
21 GreatBanc's internal ESOP Committee; (b) a draft report dated June 12, 2006
22 for a June 19, 2006 meeting of GreatBanc's internal ESOP Committee; and
23 (c) a final report dated June 20, 2006.
24
25

26 34. The May 12, 2006 draft valuation report sets forth the
27 Appraiser's valuation of the sellers' share of Sierra Aluminum's common
28

1 stock as being in the range of \$43.4 to \$51 million. The Appraiser's May 12,
2 2006 draft valuation report did not contain any reference to a valuation of the
3 fair market value of the consideration or that the seller notes were being
4 issued at "below-market" interest rates.
5

6
7 35. Around this time, in mid-May 2006, the transaction's structure
8 began to change. Rather than considering how the transaction should be
9 structured in order to best suit the ESOP's participants and beneficiaries,
10 GreatBanc was interested in structuring the transaction to make it the most
11 appealing to Hunter and Hudon, as evidenced by a May 16, 2006 email from
12 E. Vaughn Gordy, GreatBanc's then-Senior Vice President, and current
13 Chairman and CEO, to Edward Harris, Sierra Aluminum's current President,
14 in which Gordy states as follows:
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18 I wanted to throw out an additional possibility that might make this
19 transaction more interesting to Ed [Hudon] and Bill [Hunter]. If
20 instead of the company buying and retiring their stock, the ESOP buys
21 all of the shares with the same seller financing, the 1042 tax deferral
22 would be available to them. This would enable them to defer capital
23 gains tax and would increase their after tax proceeds. Just a thought.
24
25

26 36. On or about May 19, 2006, LaSalle Bank met with Sierra
27 Aluminum's shareholders and set forth various alternative structures for
28

1 Hunter and Hudon to sell their ownership interests. As described by LaSalle
2 Bank in its May 19, 2006 presentation, Hunter and Hudon had become
3 "uncomfortable" with the previously proposed transaction structure because
4 of "tax penalties" related to the installment sales tax treatment of their seller
5 notes, the long-term nature of leverage created by the seller notes, the
6 minimal level of upfront proceeds, and the long-term nature of the warrants
7 "beyond a time horizon for them to enjoy the potential economic upside from
8 these securities." For these reasons, rather than Hunter and Hudon selling
9 their collective 43.6% equity interest to the company via a redemption, and to
10 the ESOP via a purchase, the transaction evolved into Hunter and Hudon
11 selling all of their outstanding shares directly to the ESOP.

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17 37. In late May 2006, after receiving the Appraiser's May 12, 2006
18 draft valuation report, GreatBanc directed the Appraiser to attend yet another
19 presentation by LaSalle Bank. GreatBanc asked the Appraiser to again listen
20 as LaSalle Bank, the investment bankers tasked with looking after Hunter and
21 Hudon's interests, discussed key points of their valuation and the proposed
22 transaction. The Appraiser participated in this meeting via conference call.

23
24
25 38. After LaSalle Bank's presentation, the Appraiser ultimately
26 agreed to reevaluate the financial value of the transaction and determine the
27 fair market value of the consideration where the seller subordinated debt had
28

1 allegedly "below-market" interest rates. In its June 12, 2006 draft valuation
2 report, the Appraiser valued the sellers' shares to be in the range of \$40 to
3 \$47.3 million. The Appraiser additionally set forth its valuation of the fair
4 market value of the consideration, which was deemed to be in the range of
5 \$44.5 to \$47 million.
6
7

8 39. On June 19, 2006, GreatBanc's internal ESOP committee held a
9 meeting. Notes taken by committee members state that GreatBanc intended
10 to "request [the Appraiser] add language reconciling the apparent \$15/share
11 price [the ESOP is] paying vs. actual value of the consideration we are
12 surrendering."
13
14

15 40. The next day, on June 20, 2006, the Appraiser issued its third
16 and final valuation report, which sets forth its valuation of the seller's shares
17 of Sierra Aluminum common stock, as of June 20, 2006 (the "Appraisal
18 Report"). The Appraiser concluded that the seller's equity, based on a non-
19 marketable minority interest basis, was in the range of \$40.3 to \$47.7 million,
20 or \$11.86 to \$14.03 per share. For reasons described in paragraphs 44
21 through 60 below, the Appraiser overestimated the value of the stock.
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23
24

25 41. Also on June 20, 2006, the Appraiser issued to GreatBanc its
26 Fairness Opinion concluding the following:
27
28

1 On the basis of and subject to the foregoing and the attached report, as
2 of June 20, 2006, (i) [*sic*] the Consideration with a face amount of
3 \$53,000,000, or approximately \$15.58 per share, does not exceed the
4 fair market value of the Shares as of the Closing Date; (B) the ESOP
5 Note and the loan to the ESOP by the Company pursuant to the ESOP
6 Loan and Pledge Agreement are at least as favorable to the ESOP as
7 the terms of comparable loans resulting from arm's length negotiations
8 between independent parties, and are for a reasonable rate of interest;
9 and (C) the purchase and sale of the Shares, the terms of the ESOP
10 Note, the terms of the ESOP Loan and Pledge Agreement, the
11 exchange of the ESOP Note for the Exchange Notes, and the
12 redemption of common stock of the Company and cancellation of
13 options for such stock pursuant to the Stock Redemption Agreement,
14 taken as a whole, are fair to the ESOP from a financial point of view.
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21 42. In forming its Fairness Opinion, the Appraiser relied upon its
22 Valuation Opinion as contained in the June 20, 2006 Appraisal Report.
23

24 43. The June 20, 2006 Appraisal Report concluded that the "face
25 value" of the consideration the ESOP was proposing to pay the sellers was
26 \$53 million, or \$15.58 per share. The Appraiser also found that the "fair
27 market value" of the consideration, based on the "below-market" interest
28

1 rates on the seller notes in the combined total of \$43 million, reduced the
2 total value of the consideration to \$44.7 to \$47.1 million, or \$13.12 to \$13.86
3 per share. Based on this information, the Appraiser opined that "[a]s the fair
4 market value of the Consideration falls within the range of fair market value
5 of the Shares, we determined that the Consideration does not exceed the fair
6 market value of the Shares."
7

8
9 44. In its Appraisal Report, the Appraiser unreasonably relied upon
10 Sierra Aluminum's aggressive projections, which included a dramatic
11 increase in total cash flows for fiscal years 2007 to 2011 that was unlike any
12 performance Sierra Aluminum had generated in the seven years prior to the
13 2006 Transaction. During fiscal years 2000 to 2006, Sierra Aluminum
14 generated only \$1.9 million in total cash flows after paying for capital
15 expenditures. Even after adding back the company's \$5.5 million in total
16 interest expenses during this time frame, as well as a portion of the
17 company's ESOP expenses, Sierra Aluminum's total cash flows for fiscal
18 years 2000 through 2006 is in the range of \$7.4 and \$25.6 million.
19
20

21 45. In contrast to its historical performance, Sierra Aluminum
22 forecasted that its future cash flows for the five years following the 2006
23 Transaction would total \$60.3 million. Despite the fact that Sierra Aluminum
24 was forecasting earnings for a time frame two years shorter than its historical
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1 benchmark (2000 to 2006 as compared to 2007 to 2011), it nevertheless
2 forecasted a more than 50% increase in its total cash flows. GreatBanc failed
3 to engage in any independent exploration of the credibility of Sierra
4 Aluminum's aggressive cash flow projections.
5

6
7 46. The Appraisal Report also unreasonably relied upon Sierra
8 Aluminum's projections with respect to acquiring a new piece of equipment.
9 The Appraisal Report recognized that Sierra Aluminum was "operating at
10 near capacity and running two shifts, six days a week. Thus without
11 additional capacity, Sierra Aluminum's growth is limited." The Appraisal
12 Report further details Sierra Aluminum's plans to acquire a new 14-inch press
13 (to add to the company's 7-inch, 8-inch and 9-inch presses) within 18 months
14 after the transaction. Sierra Aluminum predicted that its sales would grow by
15 \$50.4 million from 2007 to 2011 and that this single piece of equipment was
16 expected to account for 54% of such growth. The remaining 46% increase
17 was therefore expected to come from Sierra Aluminum's existing business at
18 the time of the 2006 Transaction.
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24 47. The Appraisal Report acknowledges that the 14-inch press was
25 expected to cost between \$13 and \$15 million, yet the company's projections
26 failed to include any corresponding change in its expenses. The acquisition
27 of such new machinery would affect cash flows and specifically increase the
28

1 company's capital expenditures as reflected in its statement of cash flows.

2 However, the company's projections lack any increase in capital expenditures
3 that would reflect the acquisition of the 14-inch press.
4

5 48. Sierra Aluminum unreasonably anticipated accounting for the
6 14-inch press as an operating lease rather than as a capital expenditure. Even
7 assuming the validity of this assumption, Sierra Aluminum's projections still
8 failed to include any increase in its operating expenses. Not only did the
9 company's projections for fiscal years 2007 to 2011 lacked any increase in
10 total operating expenses, but the company actually projected a *reduction* in
11 its total projected operating expenses. The projections ranged only from \$3
12 to \$3.2 million, as compared with the company's 2006 levels of \$3.8 million,
13 despite the *addition* of the new 14-inch press.
14
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18 49. Sierra Aluminum entered the 2006 Transaction with \$3.8
19 million in adjusted operating expenses, projected it would incur an additional
20 \$0.9 to \$1.8 million in annual operating expenses in fiscal years 2008 to 2011
21 just from leasing the 14-inch press, and then, inexplicably, reduced its total
22 operating expenses to below its pre-2006 Transaction level in connection
23 with the ESOP's stock purchase. Moreover, Sierra Aluminum's management
24 inexplicably forecasted *cutting in half* the operating expenses of its base
25 business, i.e. the company's existing business at the time of the 2006
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1 Transaction excluding any new business from the 14-inch press, while
2 simultaneously projecting the company's dramatic growth. Again, GreatBanc
3 never engaged in any independent exploration of the credibility of Sierra
4 Aluminum's representations and projections.
5

6
7 50. Sierra Aluminum's projections also forecasted that it would
8 obtain a \$0.30 gross margin per pound of aluminum shipped that was made
9 by the 14-inch press for fiscal years 2008 through 2011. However, the
10 historic range for these premiums was between \$0.14 and \$0.21 gross margin
11 per pound. GreatBanc failed to question how Sierra Aluminum expected to
12 obtain and sustain such a significant premium over time where it was wholly
13 out of line and inconsistent with the market's historical performance.
14
15

16
17 51. The Appraiser also made improper adjustments to Sierra
18 Aluminum's cash flows by adding back ESOP expenses Sierra Aluminum
19 incurred and failing to make any corresponding increase in employee
20 compensation. The Appraiser's add-back erroneously implied that the ESOP
21 was a gift. If the ESOP was not available to Sierra Aluminum's employees,
22 then they would have needed to be compensated in some other form.
23
24 GreatBanc failed to question or investigate how the Appraiser could add
25 these expenses back without providing employees another benefit.
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27
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1 52. The Appraisal Report further inappropriately used the adjusted
2 levels of Sierra Aluminum's profits, including the ESOP expense add-back,
3 and then compared these figures with market comparable companies but
4 without making any similar adjustments to those companies' profits by
5 adding back their pension and employee benefit expenses. The Appraiser's
6 comparison was flawed because the market comparable companies also had
7 employee benefit plans and, presumably, similar expenses. Therefore, only
8 by making similar adjustments to the comparable companies could the
9 Appraiser have made an "apples to apples" comparison with Sierra
10 Aluminum's adjusted profit levels. Again, GreatBanc failed to investigate the
11 Appraiser's questionable comparison.

12 53. The Appraiser also made improper adjustments to Sierra
13 Aluminum's cash flows by adding back bonus expenses that were paid to
14 Sierra Aluminum's co-founders and outgoing executives, Hunter and Hudon,
15 because both would be retiring. Based on Sierra Aluminum's own
16 projections, it expected to achieve exceptional performance, so Hunter and
17 Hudon's replacements likely would be compensated by receiving similar
18 bonuses. By adding back the historical bonus expenses, the Appraiser
19 erroneously implied that similar expenses would not be incurred despite
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1 Sierra Aluminum's projections of dramatic increases to its sales and total cash
2 flows.

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4 54. Alternatively, by adding back the bonus payments, the Appraisal
5 Report implied that these payments were not necessary in the first place and
6 inappropriately were paid to Hunter and Hudon. The Appraisal Report could
7 not rationalize simultaneously adjusting Sierra Aluminum's income statement
8 to add back the bonus payments *and* projecting that Sierra Aluminum would
9 perform even better in the future without making similar payments to the
10 executives who replaced Hunter and Hudon. GreatBanc failed to probe the
11 Appraiser as to its justification for the bonus add-back.
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15 55. The Appraisal Report also failed to take into account the
16 possibility of a drop in aluminum prices, an increase in raw material costs or,
17 at a minimum, a reversion to average prices. At the time of the 2006
18 Transaction, Sierra Aluminum was operating at full capacity and enjoying
19 unusually high aluminum prices. However, the aluminum industry is known
20 to be a cyclical business, and market analysts at the time were expecting
21 aluminum prices to fall in the coming years. The Appraisal Report should
22 have considered these alternative scenarios. Instead, the Appraiser projected
23 that the company would enjoy the same favorable conditions for years and
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1 extrapolated Sierra Aluminum's performance, at the peak of the aluminum
2 cycle, in perpetuity.

3
4 56. Finally, although the ESOP's price for the stock was \$15.58 per
5 share, and the Appraiser's estimated value of \$11.86 to \$14.03 per share was
6 itself an overestimate, the Appraisal Report inappropriately relied on the
7 purportedly "below market" interest rate on the ESOP's \$43 million in loans
8 to calculate that the "fair market value" of the consideration was \$13.12 to
9 \$13.86 per share.
10

11
12 57. As a result of the Appraisal Report's flaws and inaccuracies, the
13 value set for Sierra Aluminum's stock as a whole and per share during the
14 June 20, 2006 stock purchase transaction was far higher than its actual fair
15 market value. Therefore, the ESOP paid more than adequate consideration
16 for Sierra Aluminum's stock.
17

18
19 58. Based on the June 20, 2006 Appraisal Report, GreatBanc
20 executed a shareholder consent on behalf of the ESOP and authorized the
21 adoption of the Sierra Aluminum Board of Directors' actions and resolutions
22 approving of the ESOP's purchase of common stock shares pursuant to the
23 Stock Purchase Agreement, the Stock Redemption Agreement and ancillary
24 agreements entered into in connection with the 2006 Transaction.
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1 59. The ESOP funded its June 20, 2006 stock purchase through
2 three different loans. First, the ESOP borrowed \$10 million from Sierra
3 Aluminum. Second, the ESOP issued notes to the Hunter Trust and the
4 Hudon Trust for a combined total of \$43 million dollars. Specifically, the
5 Hunter Trust agreed to provide a loan to the ESOP with a face amount of
6 \$21,499,221.13 (the "Hunter ESOP Note") and the Hudon Trust agreed to
7 provide a loan to the ESOP with a face amount of \$21,500,778.87 (the
8 "Hudon ESOP Note") (collectively, the "ESOP Notes"). For each loan, the
9 ESOP agreed to pledge the proportionate number of common stock shares it
10 purchased as security for repayment.

15 60. GreatBanc's decision to purchase Sierra Aluminum's common
16 stock from the Hunter and Hudon Trusts was imprudent and disloyal because
17 the Appraiser's valuation of the stock was flawed and inaccurate, GreatBanc
18 caused or permitted the ESOP to pay more than fair market value for the
19 stock, and the ESOP's purchase violated the 2000 Plan Document, which
20 required that the Trustee perform its duties under the Plan and the Trust
21 Agreement solely in the interests of the Plan's participants and their
22 beneficiaries and that all purchases of Sierra Aluminum stock by the Trustee
23 be made only at prices which do not exceed the fair market value as of the
24 date of purchase.

The Indemnification Agreements

61. The Engagement Agreement dated April 1, 2005, as amended on September 26, 2012, the terms of which applied to LaSalle Bank as ESOP Trustee and to GreatBanc as its successor, contains an indemnification agreement, which provides as follows:

14. Indemnification. For purposes of this Section 14, the term "Indemnitees" shall mean LaSalle and its officers, directors, employees, and agents. Subject to the applicable provisions of ERISA, the Company shall indemnify the Indemnitees for any loss, cost, expense or other damage, including attorney's fees, suffered by any of the Indemnitees resulting from or incurred with respect to any legal proceedings related in any way to the performance of services by any one or more of the Indemnitees pursuant to this Agreement, the Plan or the Trust. The indemnification provided for in this Section 14 shall include, but not be limited to: (a) any action taken or not taken by any of the Indemnitees at the direction or request of the Company, any agent of the Company, or any committee or fiduciary under the Plan or Trust; and (b) all costs and expenses incurred by the Indemnitees in enforcing the indemnification provisions of this Section 14, including attorney's fees and court costs. However, these indemnification

1 provisions shall not apply to the extent that any loss, cost, expense, or
2 damage with respect to which any of the Indemnitees shall seek
3 indemnification *is held by a court of competent jurisdiction, in a final*
4 *judgment from which no appeal can be taken*, to have resulted either
5 from the gross negligence or willful misconduct of one or more of the
6 Indemnitees or from the violation or breach of any fiduciary duty
7 imposed under ERISA on any one or more of the Indemnitees. An
8 Indemnatee who receives an advancement of fees or expenses from the
9 Company pursuant to this paragraph shall make arrangements
10 reasonably satisfactory to the Company to ensure that such Indemnatee
11 will reimburse the Company for such advancements in the event it is
12 determined the Indemnatee is not entitled to retain such amounts
13 hereunder. (emphasis added)

14
15
16
17
18
19
20 62. The 2000 Trust Agreement was amended contemporaneous with
21 the Engagement Agreement on September 26, 2012 to incorporate the same
22 indemnification agreement set forth above in paragraph 61.
23

24 63. Pursuant to the terms of the indemnification agreements, Sierra
25 Aluminum shall indemnify GreatBanc for any losses, costs, expenses, and
26 damages GreatBanc incurs in connection with any legal proceeding relating
27 to its services as the ESOP's Trustee, unless and until a court issues a final
28

1 unappealable judgment that GreatBanc breached its fiduciary duties under
2 ERISA or engaged in gross negligence or willful misconduct.
3

4 64. If Sierra Aluminum paid all of GreatBanc's losses, costs,
5 expenses and damages in connection with this action, the value of the
6 company would be diminished, as would the value of the company's stock.
7
8 As the 100% shareholder of Sierra Aluminum stock, the ESOP would be
9 harmed if said indemnification agreements were enforced.
10

11 **FIRST CLAIM FOR RELIEF**
12 **(Against Defendant GreatBanc for**
13 **June 20, 2006 ESOP Stock Purchase Transaction)**

14 65. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure,
15 the Secretary adopts and incorporates by reference the averments and
16 allegations of paragraphs 1 through 64 inclusive.
17

18 66. As a fiduciary of the ESOP, Defendant GreatBanc has a duty to act
19 prudently and solely in the interests of the ESOP and its participants and
20 beneficiaries. This duty includes the duty to thoroughly and objectively review
21 and analyze any valuation of Sierra Aluminum stock upon which the ESOP's
22 purchase price would be based.
23
24

25 67. The June 20, 2006 Appraisal Report had significant flaws and
26 inaccuracies that would have been uncovered during a thorough and objective
27
28

1 review and analysis by a responsible ESOP fiduciary. The Appraisal
2 Report's flaws and inaccuracies include, but are not limited to, the following:
3

- 4 (a) Using aggressive and overly optimistic projections of Sierra
5 Aluminum's future earnings and profitability;
6
7 (b) Failing to account for Sierra Aluminum's planned capital
8 expenditures, including the purchase of expensive new
9 machinery;
10
11 (c) Miscalculating Sierra Aluminum's operating expenses at the
12 time of the 2006 Transaction and incorrectly analyzing how its
13 projected new operating lease would impact its post-2006
14 Transaction operating expenses;
15
16 (d) Making improper adjustments to Sierra Aluminum's cash flows
17 and failing to make any corresponding adjustments to the public
18 companies used as comparables;
19
20 (e) Making improper adjustments to Sierra Aluminum's cash flows
21 by adding back bonus expenses paid to outgoing executives
22 despite projections of the company's dramatic future growth;
23
24 (f) Valuing the performance of Sierra Aluminum's business, which
25 depends on a cyclical commodity, at the peak of its business
26 cycle in perpetuity without any consideration of a drop in
27
28

1 aluminum prices or, at a minimum, a reversion to average
2 prices;

3
4 (g) Inappropriately valuing the consideration not at the \$15.58 per
5 share price the ESOP paid but rather in the range of \$13.12 to
6 \$13.86 based on the purportedly "below market" interest rate on
7 the ESOP's \$43 million in loans; and

8
9 (h) Erroneously concluding that the price the ESOP paid for Sierra
10 Aluminum's stock did not exceed the fair market value of the
11 stock.
12

13
14 68. Defendant GreatBanc failed to protect the ESOP and its
15 participants and beneficiaries' interests by, among other things:

16
17 (a) Failing to investigate the credibility of comparing the
18 consideration's fair market value, rather than its face value, with
19 the fair market value of the purchased shares;
20

21 (b) Failing to investigate the credibility of Sierra Aluminum's
22 aggressive and unrealistic projections of its future earnings and
23 profitability;
24

25 (c) Failing to investigate the credibility of the assumptions, factual
26 bases, and adjustments to financial statements that the Appraiser
27 relied upon and made in preparing the Appraisal Report;
28

1 (d) Failing to recognize the inconsistency between the company's
2 historical operating expenses and the company's projected
3 operating expenses on which the Appraiser's conclusions were
4 based; and
5

6 (e) Relying on the unsound Appraisal Report and improperly
7 causing or permitting the ESOP to purchase Sierra Aluminum's
8 stock from the Hunter Trust and the Hudon Trust at a price in
9 excess of its fair market value.
10

11
12 69. By its actions and failures to act as described above, Defendant
13

14 GreatBanc:

15 (a) failed to discharge its duties with respect to the Plan solely in the
16 interest of the participants and beneficiaries of the Plan and for
17 the exclusive purpose of providing benefits and defraying
18 reasonable expenses of plan administration, in violation of
19 ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);
20

21
22 (b) failed to act with the care, skill, prudence and diligence under
23 the circumstances then prevailing that a prudent man acting in a
24 like capacity and familiar with such matters would use in the
25 conduct of an enterprise of a like character and with like aims, in
26 violation of ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B);
27
28

1 (c) failed to act in accordance with the documents and instruments
2 governing the Plan insofar as such documents and instruments
3 are consistent with ERISA, in violation of ERISA §
4 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D);

5
6 (d) caused the ESOP to engage in transactions that it knew or
7 should have known constituted the sale or exchange, or leasing,
8 of any property between the plan and parties in interest, in
9 violation of ERISA § 406(a)(1)(A), 29 U.S.C. § 1106(a)(1)(A);
10 and
11

12
13 (e) caused the ESOP to engage in transactions that that it knew or
14 should have known constituted direct or indirect transfers of the
15 ESOP's assets to, or use of the ESOP's assets by or for the
16 benefit of, parties in interest, in violation of ERISA §
17 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D).
18
19
20

21 70. As a result of the conduct as described above, Defendant
22 GreatBanc caused losses to the ESOP for which it is liable pursuant to
23 ERISA § 409(a), 29 U.S.C. § 1109(a).
24
25
26
27
28

1 **SECOND CLAIM FOR RELIEF**
2 **(Against Defendants GreatBanc and Sierra Aluminum for**
3 **Indemnification Agreements Void Under ERISA § 410)**

4 71. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure,
5 the Secretary adopts and incorporates by reference the averments and
6
7 allegations of paragraphs 1 through 70 inclusive.

8 72. By its terms, as set forth in paragraph 61 above, Sierra
9
10 Aluminum's indemnification agreements with GreatBanc would require
11 Sierra Aluminum to pay all of GreatBanc's losses, costs, expenses and
12
13 damages incurred in connection with any legal proceeding relating to its
14 performance as the ESOP's Trustee, unless and until a "court of competent
15 jurisdiction, in a final judgment from which no appeal can be taken," finds
16
17 that GreatBanc breached its fiduciary duty under ERISA.

18 73. The indemnification agreements therefore purport to absolve
19
20 GreatBanc from liability for fiduciary breaches arising under ERISA, unless
21 and until a court issues a final unappealable judgment that GreatBanc
22
23 violated ERISA.

24 74. ERISA § 410(a) provides that "any provision in an agreement or
25 instrument which purports to relieve a fiduciary from responsibility or
26
27 liability for any responsibility, obligation or duty under this part shall be void
28 as against public policy[.]" 29 U.S.C. § 1110(a).

1 75. As written, the indemnification agreements would permit Sierra
 2 Aluminum to pay GreatBanc's costs and expenses even if it violated ERISA,
 3 as long as this matter does not proceed to a final judgment. As the 100%
 4 shareholder of Sierra Aluminum, the ESOP would be harmed if said
 5 indemnification agreements were enforced as written.
 6
 7

8 76. By their actions as described above, Defendants GreatBanc and
 9 Sierra Aluminum entered into indemnification agreements that are void under
 10 the anti-exculpatory provisions set forth in ERISA § 410(a), 29 U.S.C. §
 11 1110(a).
 12
 13

14 **PRAYER FOR RELIEF**

15 WHEREFORE, the Secretary of Labor prays that this Court enter an
 16 Order:
 17

18 1. Requiring GreatBanc Trust Company to restore all losses caused
 19 to the Sierra Aluminum Employee Stock Ownership Plan as a result of
 20 GreatBanc's fiduciary breaches, plus interest;
 21

22 2. Requiring GreatBanc Trust Company to return to Sierra
 23 Aluminum Company any funds it has received directly or indirectly in
 24 connection with any agreement or any provision of any agreement that grants
 25 or purports to grant GreatBanc Trust Company indemnification from Sierra
 26
 27
 28

1 Aluminum Company or the Sierra Aluminum Employee Stock Ownership
2 Plan, plus interest;

3
4 3. Voiding any agreement or any provision of any agreement to the
5 extent that it grants or purports to grant GreatBanc Trust Company
6 indemnification from Sierra Aluminum Company or the Sierra Aluminum
7 Employee Stock Ownership Plan and absolves GreatBanc Trust Company of
8 liability for its fiduciary breaches under ERISA;
9
10

11 4. Enjoining GreatBanc Trust Company from benefitting from any
12 agreement or any provision of any agreement that grants or purports to grant
13 it indemnification from Sierra Aluminum Company or the Sierra Aluminum
14 Employee Stock Ownership Plan and absolves GreatBanc Trust Company of
15 liability for its fiduciary breaches under ERISA, unless and until a court of
16 competent jurisdiction, from which no appeal can be taken, finds that
17 GreatBanc did not breach its fiduciary duties under ERISA;
18
19

20
21 5. Enjoining Sierra Aluminum Company and the Sierra Aluminum
22 Employee Stock Ownership Plan from indemnifying GreatBanc Trust
23 Company for any liability for its fiduciary breaches under ERISA, unless and
24 until a court of competent jurisdiction, from which no appeal can be taken,
25 finds that GreatBanc did not breach its fiduciary duties under ERISA; and
26
27

28 6. Granting such other relief as may be equitable, just and proper.

1
2 Dated: 9-27-2012
3

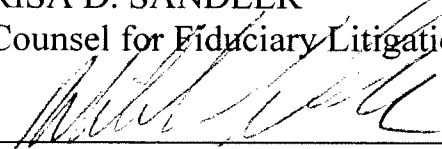
Respectfully submitted:


4 For the Secretary:

5 M. PATRICIA SMITH
6 Solicitor of Labor

7 TIMOTHY D. HAUSER
8 Associate Solicitor
9 Plan Benefits Security Division

10 RISA D. SANDLER
11 Counsel for Fiduciary Litigation

12 
13 MICHAEL SCHLOSS
14 Counsel for Financial Litigation
15 CA SBN 134124
16 schloss.michael@dol.gov

17 
18 SYMA AHMAD
19 Trial Attorney, MA SBN 674709
20 JEFFREY M. HAHN
21 Trial Attorney, DC SBN 975576
22 Office of the Solicitor
23 Plan Benefits Security Division
24 U.S. Department of Labor
25 P.O. Box 1914
26 Washington, DC 20013
27 Tel: (202) 693-5600
28 Fax: (202) 693-5610
ahmad.syma@dol.gov
hahn.jeffrey.m@dol.gov

Attorneys for Plaintiff

COPY

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)
HILDA L. SOLIS, Secretary of Labor, United States Department of Labor

DEFENDANTS
GREATBANC TRUST COMPANY, SIERRA ALUMINUM COMPANY, and
THE SIERRA ALUMINUM COMPANY EMPLOYEE STOCK OWNERSHIP
PLAN

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Michael Schloss, Syma Ahmad, and Jeffrey M. Hahn
U.S. Department of Labor, Office of the Solicitor, Plan Benefits Security
Division, P.O. Box 1914, Washington DC 20013, (202) 693-5600

Attorneys (If Known)

Gregory Hansen, Case Lombardi & Pettit, 737 Bishop St., Ste 2600, Honolulu,
HI 96813, (808) 547-5400;
Laurence Goldberg, ESOP Law Group, LLP,
4 Embarcadero Center 14th Floor, San Francisco, CA 94111, (415) 766-3512

II. BASIS OF JURISDICTION (Place an X in one box only.)

☒ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S.
Government Not a Party)

☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship
of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. ORIGIN (Place an X in one box only.)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: **JURY DEMAND:** ☐ Yes ☒ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No

☐ **MONEY DEMANDED IN COMPLAINT: \$** _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
Violations of the provisions of Title I of ERISA, as amended, 29 USC Sections 1001 et. seq.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS	TORTS	PRISONER	LABOR
<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: ED CV12-1648

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☒ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Riverside County - Sierra Aluminum Company and Sierra Aluminum Company Employee Stock Ownership Plan	Illinois - GreatBanc Trust Company

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Riverside	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):

Date 9-27-2012

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

Name & Address:

Michael Schloss, Syma Ahmad & Jeffrey M. Hahn
 U.S. Department of Labor, Office of the Solicitor
 Plan Benefits Security Division
 PO Box 1914
 Washington DC 20013



**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

HILDA L. SOLIS, Secretary of Labor, United States
 Department of Labor

CASE NUMBER

PLAINTIFF(S)

v.

EDCV12-1648-R (DTBx)

**GREATBANC TRUST COMPANY,
 SIERRA ALUMINUM COMPANY, and
 THE SIERRA ALUMINUM COMPANY
 EMPLOYEE STOCK OWNERSHIP
 PLAN**

DEFENDANT(S).

SUMMONS

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Syma Ahmad and Jeffrey M. Hahn, whose address is U.S. Dept. of Labor, Office of the Solicitor, PBSO, PO Box 1914, Washington DC 20013. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: SEP 28 2012By: 

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

Name & Address:

Michael Schloss, Syma Ahmad & Jeffrey M. Hahn
 U.S. Department of Labor, Office of the Solicitor
 Plan Benefits Security Division
 PO Box 1914
 Washington DC 20013



**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

HILDA L. SOLIS, Secretary of Labor, United States
 Department of Labor

CASE NUMBER

PLAINTIFF(S)

v.

EDC 12-1648-R (DTB)

**GREATBANC TRUST COMPANY,
 SIERRA ALUMINUM COMPANY, and
 THE SIERRA ALUMINUM COMPANY
 EMPLOYEE STOCK OWNERSHIP
 PLAN**

DEFENDANT(S).

SUMMONS

TO: DEFENDANT(S):

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Clerk, U.S. District Court

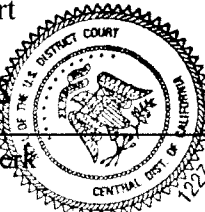
SEP 28 2012
 Dated: _____

By: _____

MARILYN DAVIS

Deputy Clerk

(Seal of the Court)



[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Manuel Real and the assigned discovery Magistrate Judge is David T. Bristow.

The case number on all documents filed with the Court should read as follows:

EDCV12- 1648 R (DTBx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

Unless otherwise ordered, the United States District Judge assigned to this case will hear and determine all discovery related motions.

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NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.